



US Army Corps
of Engineers
St Paul District

APPLICANT: General Public

Public Notice

ISSUED: November 15, 2001

EXPIRES: December 15, 2001

REFER TO: 96-06788-GP-SDE
96-06789-GP-SDE
96-06790-GP-SDE
96-06791-GP-SDE
96-06792-GP-SDE

SECTION: 404 - Clean Water Act

PROPOSED REAUTHORIZATION OF THE GENERAL PERMITS FOR THE CITY OF SUPERIOR SPECIAL AREA MANAGEMENT PLAN

1. Reauthorization is proposed for the existing general permits (GPs) listed above, which were issued in December 1996 and expire on 31 December 2001. The GPs authorize placement of dredged and fill material in wetlands designated for development by the City of Superior Special Area Management Plan (SAMP). The SAMP is a 10-year plan and the 5-year limit for the GPs provides an opportunity for a mid-course review. The GPs were initially proposed in a public notice dated 25 September 1996. An environmental assessment (EA) of the proposed GPs, including an evaluation of alternatives, was prepared by the U.S. Army Corps of Engineers (Corps) and finalized in December 1996. The background, SAMP process, wetland impacts, compensatory mitigation and other pertinent factors are addressed in the EA and supporting documentation. A copy of the EA can be obtained by contacting the Corps at the address given under item 3. of this public notice.

The GPs are categorized by activities that are similar in nature and have a limit of 10 acres of adverse impacts to wetlands for a single and complete project. A pre-discharge notification to the Corps is required for each proposed project under the GPs. The maximum fill allowable under the GPs totals 143 acres, which represents an average of 14.3 acres of wetland fill/year under the 10-year SAMP. Figure 1 illustrates the SAMP sites and both past and proposed wetland fill locations. The GPs are:

a. **GP 96-06788 For Residential Development:** Allows authorization for a maximum of approximately 42.0 acres of fill for purposes of residential development identified by the SAMP including fill for building pads, driveways and lawns. From the date of issuance in December 1996, there have been 10 authorizations approved under this GP resulting in a total of 19.8 acres of wetland fill.

b. **GP 96-06789 For Commercial Development:** Allows authorization for a maximum of approximately 41.0 acres of fill in wetlands for purposes of commercial development identified by the SAMP including fill in wetlands for building pads, parking lots, on-

site stormwater detention and warehouse facilities. From the date of issuance in December 1996, there have been 4 authorizations approved under this GP resulting in a total of 17.4 acres of wetland fill.

c. **GP 96-06790 For Industrial Development:** Allows authorization for a maximum of approximately 30.0 acres of fill in wetlands for purposes of industrial development identified by the SAMP including fill for building pads, parking lots, access roads, on-site stormwater retention and warehouse facilities. Since December 1996, there have been 4 authorizations approved under this GP resulting in a total of 15.5 acres of wetland fill.

d. **GP 96-06791 For Public Use:** Allows authorization for a maximum of approximately 23.0 acres of fill in wetlands for purposes of public use identified by the SAMP including park facilities and ball fields. Since December 1996, there have been 2 authorizations approved under this GP resulting in a total of 8.5 acres of wetland fill.

e. **GP 96-06792 For Institutional Development:** Allows authorization for a maximum of approximately 7.0 acres of fill in wetlands for purposes of institutional development including fill for public and private schools, universities and nursing homes. Since December 1996, there have been 4 authorizations approved under this GP resulting in 3.7 acres of wetland fill.

f. **Summary of Wetland Impacts:** Total wetland fill under the SAMP GPs during the past 5 years was 64.9 acres, or approximately 45 percent of the maximum allowable fill of 143 acres.

Avoidance and Minimization: Avoidance and minimization of wetland impacts are critical components of the SAMP. Originally, the city's preferred alternative was 320.5 acres of fill over the 10-year period. This was reduced to 198.4 acres after an uplands analysis was conducted to identify all vacant, buildable upland parcels. Further reduction of wetland impacts occurred as a result of changing the configuration of SAMP sites, changing the status of a SAMP site from proposed industrial development to preservation due to discovery of a concentration of rare plants, and deleting open water fill sites. This reduced wetland fill to the maximum of 143 acres allowable under the GPs.

The pre-discharge notification (PDN) process allows the Corps to review each proposal and evaluate project- and site-specific measures to further minimize adverse impacts to wetlands. If the PDN review determines that adverse impacts would be more than minimal and could not be ameliorated by special conditions, the GPs would not apply and an individual Section 404 permit would be required.

Compensatory Mitigation: The GPs were issued on the condition that compensatory mitigation be accomplished to offset the adverse wetland impacts authorized by the GPs. Figure 2 shows the locations of the mitigation sites. SAMP mitigation sites M3, M4 and M8 have been constructed. Wetland hydroperiod and hydrophytic vegetation have established and the sites are continuing to mature. Once

mature, it is estimated that M8 will support approximately 30 to 35 acres of wetlands and M3/M4 will support approximately 13 acres of wetlands. Additional SAMP mitigation sites are to be developed to keep pace with wetland losses.

One of the mitigation options proposed by the City of Superior is the Pokegama Bay Conservancy Agreement. Pokegama Bay is a state-designated natural area composed of high quality emergent marsh and open water communities bordered by uplands composed of clay bluffs. In August 2000, the City of Superior submitted proposed covenants to protect in perpetuity 72 acres of upland buffer adjacent to the Bay. This would preclude logging, road building, development and other incompatible uses that could result in erosion of the clay bluffs and subsequent sedimentation within the Bay. Upland buffers can generate as much as 4:1 credit for mitigation (each 4 acres of upland buffer yields one acre of credit). Thus, the conservancy agreement could yield 18 acres of mitigation credit. Review of the proposed conservancy agreement raised the question of noxious weed control within the conservancy area, particularly control of purple loosestrife (*Lythrum salicaria*). No data were available as to the extent of purple loosestrife within the proposed conservancy area; therefore, the conservancy agreement was put on hold until a purple loosestrife survey could be conducted in the summer of 2001. That survey was conducted in August and documented that Pokegama Bay is in the first stages of a purple loosestrife infestation. The infestation is less than 2 percent areal cover of the emergent marsh communities, but is too extensive for hand removal or spot herbicide treatment. Biocontrol (e.g., introduce loosestrife beetles) appears to be the best option. Noxious weed control is considered enhancement of existing wetlands, which can generate wetland mitigation credit at a ratio of 3:1. The City of Superior is currently preparing a plan for submittal to the Corps that would include both preservation and enhancement measures in the proposed Pokegama Bay Conservancy Area. The amount of mitigation credit will then be determined by the Corps.

2. SPECIFIC INFORMATION.

PROJECT LOCATION: The SAMP encompasses the 45 square miles that constitute the corporate boundaries of the City of Superior, Douglas County, Wisconsin. Figure 1 illustrates the location of individual SAMP sites.

DESCRIPTION OF PROJECT: Wetland fill at SAMP-designated development sites.

QUANTITY, TYPE, AND AREA OF FILL: A maximum of approximately 78.1 acres of wetland fill over the next 5 years (143 acres - 64.9 acres filled to date = 78.1 acres of fill remaining).

VEGETATION IN AFFECTED AREA: A diversity of wetland plant communities ranging from wet/sedge meadow, shallow marsh, alder thicket and wooded swamp are present. Some red clay plain wetland communities support populations of state-listed rare plants. See the discussion under 4. Threatened or Endangered Species.

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SOURCE OF FILL MATERIAL: Local sources.

3. REPLIES/COMMENTS.

Interested parties are invited to submit to this office written facts, arguments, or objections within 30 days of the date of this notice. These statements should bear upon the suitability of the location and the adequacy of the project and should, if appropriate, suggest any changes believed to be desirable. Comments received may be forwarded to the applicant.

Replies may be addressed to Regulatory Branch, St. Paul District, Corps of Engineers, 190 Fifth Street East, Saint Paul, MN 55101-1638.

Or, if you have questions about the project, call Steve D. Eggers at the St. Paul office of the Corps, telephone number (651) 290-5371.

4. THREATENED OR ENDANGERED WILDLIFE OR PLANTS OR THEIR CRITICAL HABITAT.

Douglas County is within the known or historic range of the following Federally-listed threatened (T) and endangered (E) species:

<u>Species</u>	<u>Habitat</u>
Gray wolf (E)	Northern forested areas
Kirtland's warbler (E)	Potential breeding in jack pine
Bald eagle (T)	Breeding; mature forest near water
Piping plover (E)	Sandy beaches; bare alluvial and dredge spoil islands

This application is being coordinated with the U.S. Fish and Wildlife Service. Any comments it may have concerning Federally-listed threatened or endangered wildlife or plants or their critical habitat will be considered in our final assessment of the described work.

Additionally, the following species listed by the State of Wisconsin as threatened (T), endangered (E) and special concern (SC) occur in wetlands within SAMP development sites:

<u>Species</u>	<u>Status</u>	<u>SAMP Site Number</u>
Sweet coltsfoot (<i>Petasites sagittatus</i>)	T	13,14,15
Small yellow water crowfoot (<i>Ranunculus gmelinii</i>)	E	7,15
Vasey's rush (<i>Juncus vaseyi</i>)	SC	6,7,12,14,15
Neat spikerush (<i>Eleocharis nitida</i>)	E	13,14,15
Northern reed grass (<i>Calamagrostis stricta</i> subsp. <i>inexpansa</i>)	SC	6

In addition, populations of clustered bur-reed (*Sparganium glomeratum*) (T) and black sedge (*Carex nigra*) (SC) have been discovered

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in wetlands proposed for development within the City of Superior, but outside of SAMP sites. The potential exists that these species could be discovered within SAMP sites as well.

A site-specific survey for all of the above listed T/E/SC plant species is a requirement of the SAMP application process as specified by the City of Superior's SAMP Ordinance. Surveys are conducted between 20 May and 20 September by a qualified wetlands ecologist.

Measures to avoid, minimize and compensate for impacts to rare plant populations are incorporated into the review and approval process under the SAMP GPs. For example, the configuration of the proposed development may be changed to avoid or minimize impacts. A site initially proposed for industrial development was redesignated as a mitigation site when a concentration of rare plant populations was discovered. Clustered bur-reed, Vasey's rush and neat spikerush have also shown the ability to naturally colonize wetland mitigation sites, primarily wetland creations consisting of shallow scrapes in red clay. Efforts to translocate rare plants have been conducted for non-SAMP projects (e.g., expansion of the city's airport). These efforts are being monitored to determine the success of this approach and whether it is a viable option for salvaging rare plants from SAMP development sites.

5. JURISDICTION.

Wetland fill projects involving SAMP sites are subject to the regulatory jurisdiction of the Corps because Lake Superior, the St. Louis River and the Nemadji River are navigable waters of the United States; the Pokegama River and other streams within the City of Superior are tributaries to those navigable waters; and wetlands adjacent to the rivers, their tributary systems and/or Lake Superior are waters of the United States.

The 9 January 2001 decision by the U.S. Supreme Court in Solid Waste Agency of Northern Cook County v. Corps of Engineers (No. 99-1178), struck down use by migratory birds as a means to establish an interstate commerce connection. This may have the effect of eliminating Section 404 jurisdiction over SAMP sites that are found to be isolated (e.g., not part of a surface tributary system to a water of the U.S.). A case-by-case review will be conducted when a development plan is proposed to determine if a SAMP site is no longer subject to Section 404 jurisdiction. A preliminary review found that most wetlands of SAMP sites are part of a tributary system.

REGULATORY AUTHORITY: This application will be reviewed according to the provisions of Section 404 of the Clean Water Act. Therefore, our public interest review will consider the guidelines set forth under Section 404(b) of the Clean Water Act (40 Code of Federal Regulations 230).

6. WATER QUALITY CERTIFICATION.

This Public Notice has been sent to the Wisconsin Department of Natural Resources and is considered by the District Engineer to

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constitute valid notification to that agency for water quality certification.

A permit will not be granted until the Wisconsin Department of Natural Resources has issued Section 401 certification.

7. HISTORICAL/ARCHAEOLOGICAL.

Fifteen sites on the National Register of Historic Places are located within the City of Superior. These primarily consist of historic buildings in the downtown and waterfront areas. This public notice is being sent to the National Park Service, the State Archaeologist, and the State Historic Preservation Officer to determine if these sites, or other cultural resources eligible for inclusion on the National Register, may be affected by the described GPs.

8. PUBLIC HEARING REQUESTS.

Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this application. Requests for public hearings shall state, in detail, the reasons for holding a public hearing. A request may be denied if substantive reasons for holding a hearing are not provided or if there is otherwise no valid interest to be served.

9. PUBLIC INTEREST REVIEW.

The decision whether to issue a permit will be based on an evaluation of the probable impact, including cumulative impacts, of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered, including the cumulative effects. Among those are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production and, in general, the needs and welfare of the people. Environmental and other documents will be available for review in the St. Paul District Office.

The Corps is soliciting comments from the public; Federal, State, and local agencies and officials; Indian tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps to determine whether to issue, modify, condition, or deny the GPs. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to

determine the need for a public hearing and to determine the overall public interest of the proposed activity.

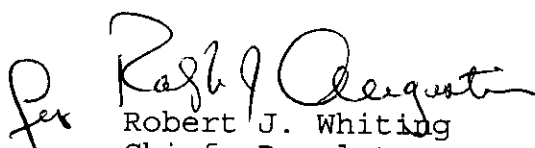
10. WISCONSIN COASTAL MANAGEMENT PROGRAM

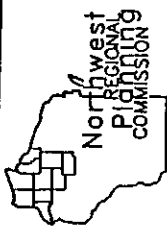
The Wisconsin Coastal Management Program (WCMP) in the Department of Administration is inviting public comment regarding this project. The WCMP may conduct a Federal consistency review to verify that the project will comply with State policies in Wisconsin's coastal zone. Further information may be obtained from the Federal Consistency Coordinator at: Wisconsin Coastal Management Program, P.O. Box 7868, Madison, WI 53707-7868; (608) 266-8234. Any comments on whether or not the GPs comply with the State enforceable policies should be received within 30 days by the Federal Consistency Coordinator.

11. FUTURE PLANNING

In 2001, the City of Superior initiated a proposal to expand the SAMP to more of a comprehensive plan. The current SAMP designates areas of wetland fill allowable under GPs, whereas a comprehensive plan would address all wetlands within the city and identify wetlands to be preserved and/or managed as well as those proposed for development. A series of meetings of the SAMP Technical Committee were held during 2001 and is on-going. A primary task at present is to develop a suitable wetland functional assessment method. It is anticipated that the overall planning process would take 1-2 more years to complete. Any proposed changes to the SAMP GPs, or proposals for other Section 404 authorizations, would be announced in a public notice to provide an opportunity for public review and comment.

Enclosures

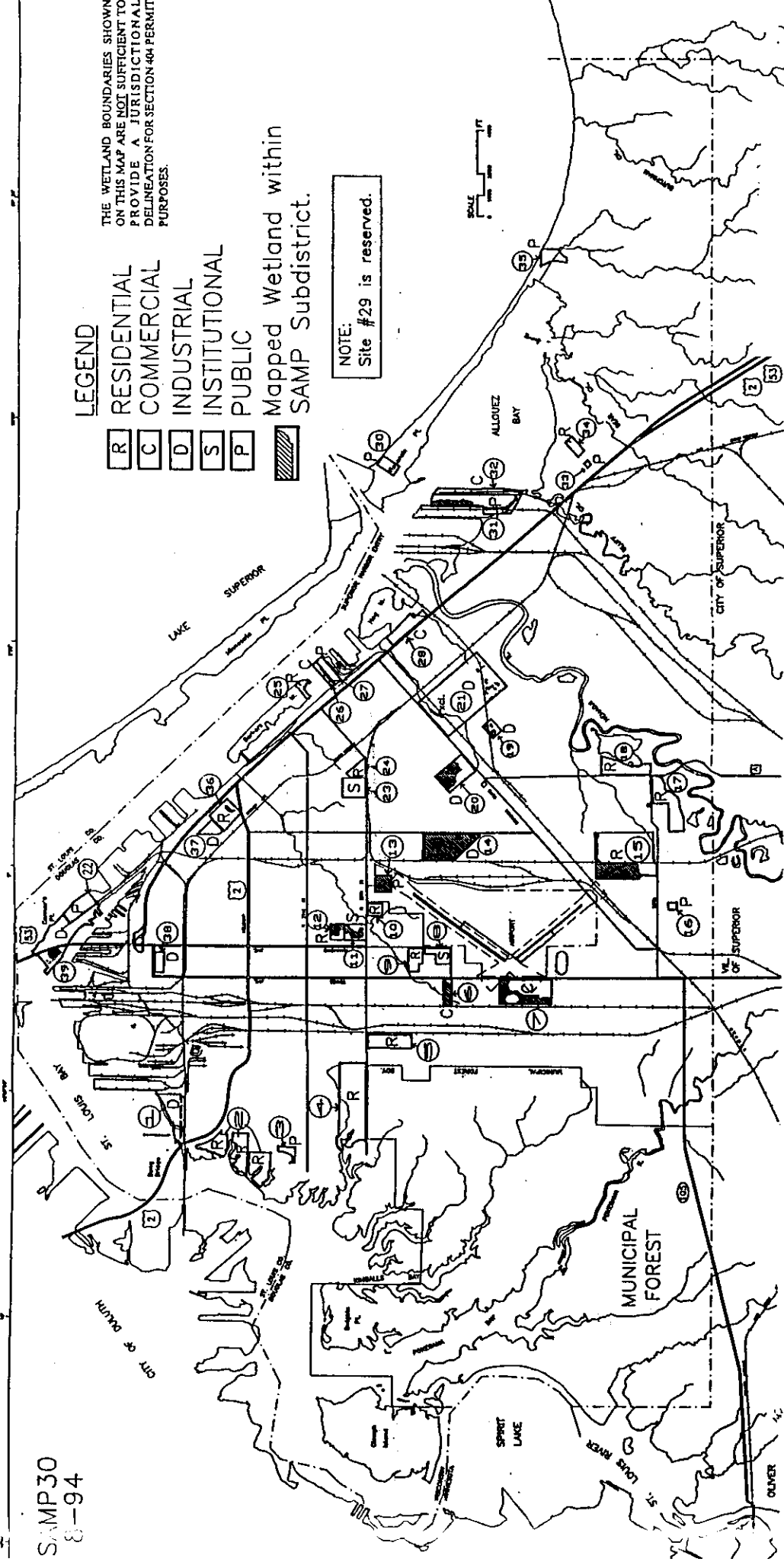

Robert J. Whiting
Chief, Regulatory Branch



SUPERIOR AREA MANAGEMENT PLAN

COMBINATION PRESERVATION-DEVELOPMENT LAND USE PLAN II

SAMP30
8-94



THE WETLAND BOUNDARIES SHOWN
ON THIS MAP ARE NOT SUFFICIENT TO
PROVIDE A JURISDICTIONAL
DELINEATION FOR SECTION 404 PERMIT
PURPOSES.

LEGEND

- R RESIDENTIAL
- C COMMERCIAL
- D INDUSTRIAL
- S INSTITUTIONAL
- P PUBLIC
- Mapped Wetland within
SAMP Subdistrict.

NOTE:
Site #29 is reserved.

FIGURE 1



SUPERIOR AREA MANAGEMENT PLAN

CONCEPT MITIGATION PLAN

SUP-107
11/74

NOTE: THE WETLAND BOUNDARIES SHOWN
ON THIS MAP ARE NOT SUFFICIENT
TO PROVIDE A JURISDICTIONAL
DELINEATION FOR SECTION 404
PERMIT PURPOSES.

LEGEND

PROPOSED WETLAND CREATION / RESTORATION SITES

- Natural Area Boundary
- NA-1 Pokegama Bay-Wetlands
- NA-2 Kimballs Bay-Boreal Forest
- NA-3 Dwight's Point-Willow/
Alder Swales
- NA-4 Upland Conifers

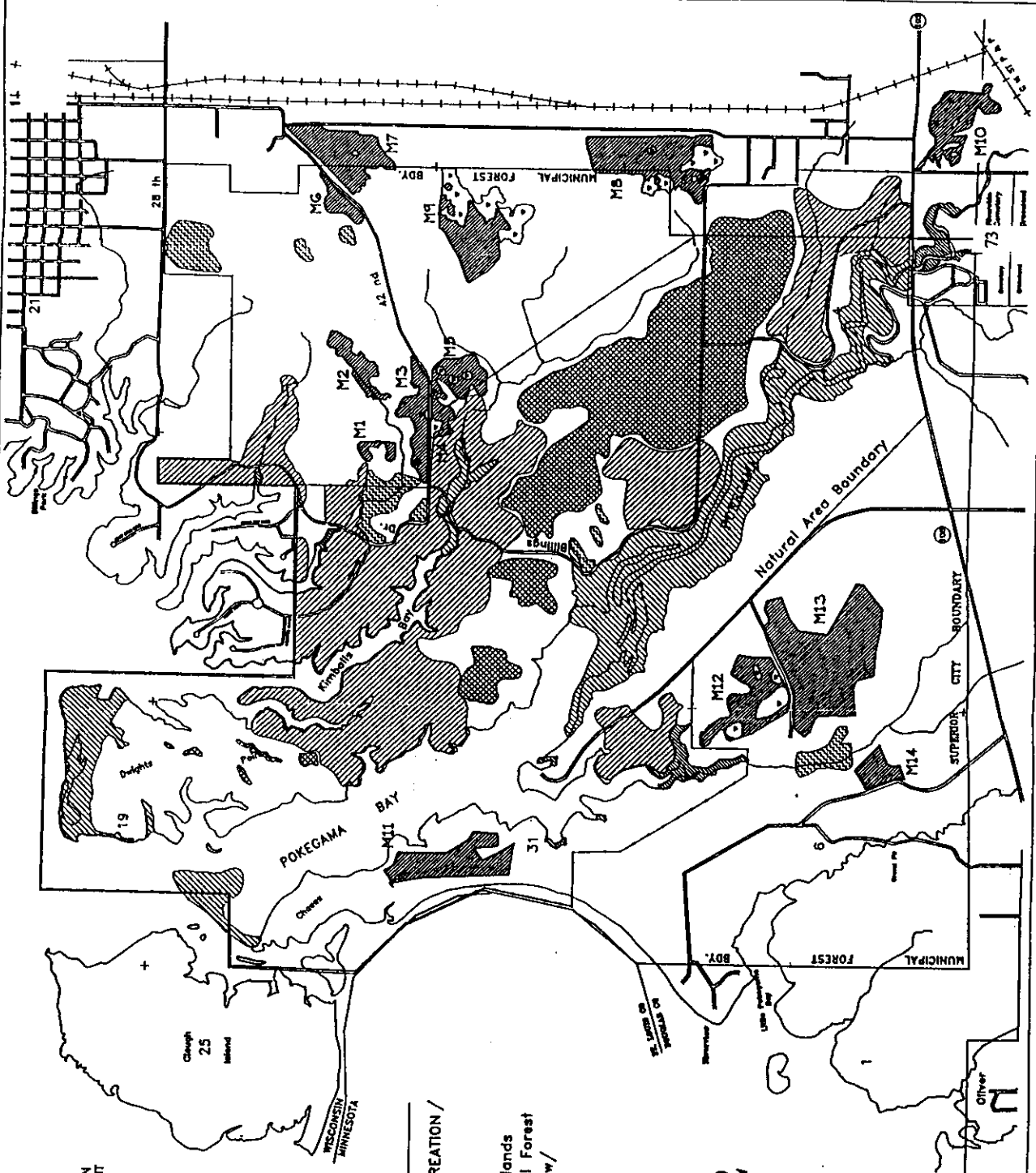


FIGURE 2

0 1000 2000 3000
SCALE IN FEET